The Honorable Douglas L. Parker

Assistant Secretary of Labor for Occupational Safety and Health

Occupational Safety and Health Administration

U.S. Department of Labor

200 Constitution Avenue, NW

Washington, DC 20210

Comments: Docket ID: “Emergency Response Standard” (Emergency Response) Rule [Docket No. OSHA-2007-0073] (RIN 1218-AC91)

Dear Assistant Secretary Parker,

The NYS United Concerns Proposed OSHA 1910.156 Response Committee is a combination of major association representatives from fire and emergency service organizations from across New York State. We consist of leadership representatives from Association of Fire Districts State of New York, Firefighters Association State of New York, New York State Fire Chiefs Association, New York State Fire Coordinators Association, New York State Fire Marshalls Association, New York State Fire Police Association, New York State Association of Fire Chaplains, Long Island Law and Legislation Committee, and other special interest associations here in the State. We have been joined by a number of attorneys, fire service lobbyists, training agencies, and vendors of emergency service products. We represent over 900 Fire Departments and 40,000 fire and EMS responders from across the state.

We started meeting weekly in December 2023 to discuss, digest, educate and embrace the changes proposed in the OSHA 1910.156 Emergency Response Standard. From the beginning, we have applauded OSHA for taking steps to help protect our first responders. We wholeheartedly agree that there have been significant changes in the hazards we face, and the events we respond to since the original 1910.156 Fire Brigade Standard. Our organizations have promoted responder safety and gone to great lengths to educate responders on safety concerns and champion initiatives to make our jobs safer. We are proud of the dedication of our organizations and the success we have had helping to reduce injuries and line of duty deaths. We welcomed the assistance of OSHA to help move things in the right direction.

As we began to digest the proposed rule, we became increasingly concerned as to the approach the new rule was taking on several initiatives. We fear that if implemented as written, this proposal could actually decrease emergency responder and community safety. Our goal is not to be excluded from the rule, but rather to help draft a rule that is attainable, technically feasible, and can be implemented at an economical level that is achievable by our communities. We have long said that if you are not willing to be part of the solution, you are indeed part of the problem. ***We 100% offer our assistance in moving this forward and wish to participate in being part of the solution.***

***We offer the following concerns as examples and offer alternatives that we feel would better suit the goals of this major undertaking.***

1. We find the proposed rule, as written, to be both arbitrary and capricious. After weekly meetings digesting the material, we find ourselves just as confused on some points as we were back in December. The 608 page document is wordy and difficult to follow. The meat and potatoes of the actual rule can be found on the last 40 or so pages. Then you add in the Incorporated By Reference (IBR) standards, manufacturers recommendations, and other references and you quickly are over 3000 pages of materials that must be read and understood. Much of the data used is currently inaccurate or outdated. We cite examples implying that the average volunteer and/or combination fire department budget is 1.7 million dollars. We find no reliable or statistically significant data that backs that up. We also noticed that salary data used is from 2005. We cannot find workers to perform the work at 2005 salary levels. Those two examples alone sink the theory that the proposed changes can be accomplished at the OSHA claim of under 1% of budget. That number is grossly inaccurate. We cannot accept the data provided as accurate. ***What we can, and are willing to do is help you gather the correct data so that true economic feasibility of a new rule can be calculated. To do this we must understand the structure, funding sources, and regional differences of first responder agencies.***
2. We also find it extremely difficult trying to understand the massive amounts of information contained in the Incorporated by Reference NFPA Standards. OSHA needs to remove the IBR standards and move the language of what is required directly into the rule. NFPA standards are guidelines to be considered in the context of a department’s operations, risks, size, etc. They are written to be the gold standard in the industry and a goal for emergency response agencies to try to meet. We would challenge you to find an emergency response agency in this country that is 100 percent compliant with all the standards, let alone the majority of agencies that will be affected by this new rule. Making them equivalent of law takes away all optionality for the departments. NFPA standards were not designed for 100% applicability. Putting them in an OSHA regulation gives them the force and effect of law, with no optionality available, no matter what the reg may say. The incorporated NFPA standards are not free for us to use in a format that is helpful. By having some of the rule in the last 40 pages, some scattered in the bulk of the document, and some in the referenced standards, there is no clear path to understanding what is actually required. We offered the attached email exchange as evidence of just how confusing this has become. ***What we can and are willing to do is we help you identify the intended material and work with you to draft the wording that is attainable.***
3. The majority of fire departments operate on fixed, tax-driven budgets, and budget increases are limited by laws and statutes. We cannot just raise the price of our product to offset the costs. We cannot take the costs out of profits to comply either. We simply do not operate in that world. What we can’t do is agree to anything that would have a cost that would increase our current budgets over 1%. ***What we can do is continue to ask the federal government to increase the grant programs to help offset the costs.*** The problem here is that the federal government has consistently cut funding for these programs and they are highly competitive. ***We can also work with you to identify initiatives that can be implemented at no or low costs to the AHJ. One example of a low cost initiative that would directly lower the number of injuries and deaths to emergency responders is to incorporate NFPA 1500 Chapter 6. This standard would require emergency response vehicles to come to a complete stop at negative right of way intersections. We can produce data that would show how dangerous intersections are and yet this new standard hardly addresses this major concern. We can identify a number of initiatives just like this one that would directly lower the hazards faced by emergency responders. Let’s work together to identify this low hanging fruit.***
4. Much of the proposed standard is driven towards large fire departments with all or mostly all career firefighters. It is much easier for a career department to meet requirements such as on duty wellness programs, additional training hours, additional officer training requirements, inclusion in assessments and preplans, inspections of vehicles within 24 hours of a call, etc. What the volunteer fire service cannot do is drain even more hours out of our already overtaxed members. Unfortunately, the current fire department model in the US is not a one size fits all approach, nor can it be. ***What we can do is evaluate the tasks of our members and dedicate more time for firematic duties and training and less hours on fundraising and community activities***. This will come at an additional cost to our communities and governments.
5. There is much confusion currently on what exactly would be required for firefighter physicals with the incorporation of all or parts on NFPA 1582. Our vendors have given us prices everywhere from $800 to $4500 per firefighter per year. The current average for firefighter physicals in NY is around $300 per firefighter per year. We simply cannot afford this increase to give each firefighter a complete NFPA 1582 physical regardless if it is every year or every two years depending on 15 exposure thresholds. We also do not have the internal expertise to monitor overall firefighter health and wellness of each independent member. ***What we can do is work with our department physicians to develop comprehensive annual physicals based on each firefighters level of activity and personal health. These physicals could include basic cancer and cardiac monitoring without reaching the level dictated by NFPA 1582.***
6. The incorporation of NFPA 1021 would require first line officers to have Fire Officer 1, Asst. Chiefs to have Fire Officer 2 and Chief Officers to have Fire Officer 3. As you move up in these courses you must meet the requirements of the lower courses and have additional coursework as a prerequisite. Many states do not even offer Fire Officer 1 and 2, and those that do currently have limited availability. Some states also have different constraints than other states as to what is required. For example, several states require you to meet Fire Instructor qualifications, where others do not. Fire Officer 3 covers a lot of material that is designed for career chiefs and subject matter that is not required for volunteer chiefs such as contract negotiations. We cannot ask our volunteer officers to take vacation so they can sit through classes that will never apply to them. ***What we can do is sit with our state training agencies and develop courses that are tailored to the specific needs of our unique areas and come up with appropriate state level requirements.***
7. The aggressive implementation matrix included in the 608 page document is not technically feasible or realistic in implementation timeline. Many states do not have the required courses currently available at an achievable level to meet the proposed timeline. We cannot meet rules when the logistics are not in place to get the training we need. ***We can work with OSHA and our training agencies to prioritize the training requirements and develop a new timeline that is reasonable and attainable.*** We cannot do this through written and in person comment periods. This can only be achieved by incorporating a full negotiated rule making process that has not taken place up to this point in this process. We need everyone sitting at a table to understand the needs and capabilities.
8. We fail to see the significant risk or justification of significant risk for some of the safety items listed in the proposed rule. While many of these items are best practices and would be nice to implement, is it really under the authority of OSHA to propose mandates that fail to meet the definition of significant risks? Many of the items are also already covered under separate laws and/or building codes. Where is the need to impose rules on top of existing regulations? These items include proposed rules covering hardwired smoke and CO alarms, fire poles and exhaust evacuation systems. While we agree these are best practices, is there data available to show these items are of significant risk to emergency responder injuries and deaths? ***We are willing to sit with OSHA and discuss the need for each part of this rule and work to uncover if a significant risk is justified for various pieces of this proposal.***
9. The proposed rule requires a vast amount of additional administrative, documentation, and planning processes to be performed by the emergency response agencies. While we can not argue that these activities could be helpful, we are concerned with the pure volume of additional work that would be required. We feel that OSHA has grossly underestimated the time requirements that these would impose. During the evaluation process many agencies, especially the all-volunteer agencies, have expressed that they would be forced to hire some type of administrator or district manager to perform this work. This comes at a substantial cost to the emergency service organization. We are also concerned by the pure number of preplans that would be required. It is also required that these preplans would be available to on-scene providers. Many agencies lack the technology to have these preplans available to all responders on the scene. Risk Management plans are also required that take a level of expertise and a considerable amount of additional time to prepare and keep updated. A large organization with support staff may be able to keep up with this workload. A smaller or all-volunteer agency will not be able to keep up with the requirements. ***We are willing to work with OSHA to develop a reasonable amount of community vulnerability assessments, preplans, and documentation and help develop templates that can be used by emergency service organizations to lessen the amount of time and burden that would be imposed by this rule.***
10. The proposed rule would require physical barriers to be set up at each emergency scene to include a cold zone, warm zone, hot zone, and no entry zone. Given the various complexities of each incident, and the amount of manpower present, neither would this simple be a feasible requirement for every emergency scene, nor does every scene require it. ***What we can do is mandate that the IC is responsible for conducting a complete 360-degree walk around of every scene (when possible, obviously it would be impossible to complete a 360-degree walk around of a 10 plus acre grass fire or a train crash that spans a mile or more) and establish barriers as a scene necessitate by the IC or Safety Officer. We also recommend that the National Incident Management System (NIMS) be the designated management system to be used at every incident. Leaving the system used up to the responding agency leads to inconsistency. We have a well-recognized national system in place, let’s use it.***

This list of comments is not meant to be a complete list of concerns. This is only a short list of major items that we have been able to put together given the short nature of public comment time in comparison with the time it took to put this draft rule together. Given more time to comment, we could come up with a more detailed and comprehensive list. We want to again state that we feel that much of what is included in the proposed rule is agreeable and attainable for our agencies. Having said that, we want to be clear that we do not feel that several items included in the proposed rule are economically or technically feasible, show significant risk, or fall within the scope of OSHA to mandate certain rules. We find much of the report arbitrary and capricious and are concerned with these unfunded mandates. We also fear what OSHA may consider as logical outgrow of the current proposal and we feel there are significant alternatives to many parts of the proposed rule that would be much more attainable. We again offer our assistance in sitting down with the appropriate parties and working with OSHA to modify this rule into a format that will serve the goal of reducing emergency responder injuries and deaths.

***We offer the following comments to the questions posed by OSHA in your proposed document:***

QUESTIONS AND ISSUES COMPILED FROM THE EMERGENCY

RESPONSE NOTICE OF PROPOSED RULEMAKING

SCOPE

(a)-2. OSHA is seeking information and data about which States with OSHA-approved State Plans expressly cover volunteer emergency responders as employees***.***

***In NYS all volunteer responders would be covered under this proposal due to court cases that have determined volunteers and considered employees because of Work Comp insurance and LOSAP plans they may fall under. We do not consider either of these as “substantial remuneration” and ask OSHA to revisit how these are calculated and may be affected because of state plan rules. We feel this has left us with a one size fits all rule that really does not fit all.***

(a)-4. OSHA is seeking input regarding what types and levels of search and rescue services and technical search and rescue services should be included or excluded from the rule, and the extent to which those inclusions or exclusions should be specifically listed.

***Again, because of the NYS laws we do not feel the option for exclusion currently exists. This is a problem.***

(a)-5. OSHA is seeking input whether the agency should consider developing a separate rule for protecting workers involved in the clean-up of disaster sites, and associated recovery efforts? Commenters should provide substantiation for developing or not developing such a rule**.**

***OSHA should consider a separate rule for each type of responder covered under the proposed rule. Logical separate groups would include: Career Fire Service agencies, Combination and Volunteer agencies, EMS-only agencies, and other responding agencies such as clean up, tow agencies, etc.***

**This is another example where OSHA should evaluate its existing catalog of standards. For example, OSHA already has rules for clean-up of hazardous materials incidents and after disasters. OSHA should be careful not to create confusion by creating a new standard if there are existing standards for these efforts.**

(a)-6. OSHA is seeking input on whether the agency should consider excluding other emergency response activities besides those in 29 CFR 1910.120 (Hazardous Waste Operations and Emergency Response (HAZWOPER)), 29 CFR 1910.146 (Permit-Required Confined Spaces in General Industry. Commenters should provide substantiation for excluding any other emergency response activities.

***OSHA should consider excluding any other operations that have their own standards. For example, OSHA already has standards for incidents involving confined spaces (1910.146), hazardous materials (1910.120), trenches and excavations (1926.651 and 652), fall protection (1926.501). In addition, OSHA should consider adopting the NWCG standards for wildland fire operations,***

DEFINITIONS

EMERGENCY RESPONSE PROGRAM (ERP) DEVELOPMENT

(e)-1. OSHA is considering adding to both paragraphs (e)(1) and (2) a requirement to permit employee representatives to be involved in the development and implementation of an ERP. OSHA is also considering adding to paragraph (e)(4) a requirement to allow employee representatives to participate in walkaround inspections, along with team members and responders. OSHA is seeking input on whether employee representative involvement should be added to paragraph (e).

***We feel that allowing members to be part of any of the plans and documents is a good idea. However, when we mandate that they participate, as has been done in this prosed rule, this becomes extremely difficult for agencies where the members are volunteer and not getting paid to complete these tasks.***

RISK MANAGEMENT

(f)-1. OSHA is seeking input on whether other activities or subjects should be added to the list of minimum requirements for the risk management plan.

***The current list of required Risk management plans is already exhaustive and not attainable by smaller agencies. This listed needs to be modified for smaller agencies.***

(f)-2. OSHA is proposing to have a performance-based infection control program provision in the risk management plan. OSHA is seeking comment on this approach including whether a final standard should incorporate a particular consensus standard or other guidance, or otherwise include specific requirements regarding infection control.

***We already have infection control requirements in place here in NY. Additional requirements are not needed to be covered in this rule.***

MEDICAL SCREENING AND SURVEILLANCE

(g)-1. OSHA is seeking input and data on whether the proposed rule’s requirements for medical evaluations are an appropriate minimum screening for team members and responders. Should the minimum screening include more or fewer elements, and if so, what elements? Commenters should provide documentation and data supporting any additions or subtractions from the minimum medical screening. OSHA is also seeking additional data and information on the Emergency Service Organizations (ESOs).

***ESO should have the discretion to determine minimum screening requirements. The ESO should work with its medical provider to determine what conditions to screen and the proper time period for performing these evaluations.***

***It is important to recognize the cost of the physicals recommended by NFPA 1582, the Standard on Comprehensive Occupational Medical Program for Fire Departments***. ***Our vendors here in NY have given us a wide range of what they feel is required under the proposed rule and what the costs would be. We simply do not have the budgets for physicals in the thousands of dollars range.***

(g)-2. OSHA is seeking input on whether an action level of 15 exposures to combustion products within a year to trigger medical surveillance consistent with National Fire Protection Association (NFPA).

***We have seen no data that supports this 15 exposure limit. Allow the local medical providers to work with each department and determine what is required.***

(g)-3. OSHA is seeking input on whether the additional medical surveillance proposed in paragraph (g)(3) should be extended to include WEREs and team members. Commenters should provide supporting documentation and data that substantiate team member exposures to combustion products at or above the proposed action level.

***Additional medical surveillance testing is beyond the budgets of most of the organizations that we represent. Again, leave this up to the AHJ and medical providers to determine what is needed.***

(g)-4. OSHA is seeking input and data on whether stakeholders support the proposed fitness for duty (ability to physically accomplish required job tasks safely) requirements or whether the requirements pose a burden on or raise concerns for team members, responders, WEREs or ESOs. Commenters should provide explanation and supporting information for their position.

***The local fire department should be given flexibility, based on the functions their responders perform to determine its fitness requirements for purposes of OSHA enforcement.***

(g)-6. OSHA is seeking input on whether every three years is an appropriate length of time for fitness re-evaluation, and if not, what interval would be appropriate. The agency is seeking information and data to support an alternative interval between evaluations.

***We recommend that a fitness re-evaluation be held annually as required by NFPA 1582. However, consistent with our discussion on physicals and fitness for duty requirements, we recommend that OSHA should provide flexibility to allow the ESOs to determine their own fitness evaluation requirements, and then ensure that the ESO is meeting its self-defined requirements.***

TRAINING

(h)-1. OSHA is seeking input and data regarding the appropriate methods and interval(s) for skills checks, as it relates to a team member’s or responder’ ability to perform essential job tasks and proposed paragraph (h)(3).

***We recommend that OSHA consider the skills requirements implemented by PESH here in NY. Those requirements were a joint effort between all the major fire service organizations here in the state and were well thought out and attainable. They have served us well.***

FACILITIES

(j)-1. OSHA is seeking input on whether the agency should consider prohibiting the installation of fire poles in new ESO facilities.

***Is there any data that shows this as a significant risk? If not leave it out of this proposed rule and up to local building codes.***

(j)-2. OSHA is seeking input on whether ESO facilities with sleeping areas should be protected by automatic sprinkler systems, as proposed in paragraph (j)(2)(ii).

***This is a local building code issue. Leave it up to building codes to determine. We encourage smoke and CO alarms and sprinkler in new construction. This could be extremely costly in trying to retrofit an old building.***

PERSONAL PROTECTIVE EQUIPMENT (PPE)

(k)-1. OSHA is seeking input on whether the agency should specify retirement age(s) for PPE. Commenters should provide information and data to support specific retirement/remove from service criteria for PPE.

***Unless there is data that shows gear of a certain age is no longer beneficial, the AHJ should be able to inspect the gear using developed criteria and determine when the gear should be removed from service. Interior firefighters should have gear retired more frequently than gear worn for exterior operations.***

VEHICLES

(l)-1. OSHA is seeking information on whether there are any other situations or vehicles where OSHA should require, or exclude, the use of seat belts and vehicle harnesses. If so, please explain.

***We believe seatbelts and/or appropriate restraining devices should always be required.***

(l)-2. OSHA is seeking input on how compliance with (l)(2)(iii), where emergency vehicles are not moved until all passengers are seated and belted, would be achieved in situations where PPE must be donned enroute to an incident. Would the team members or responders stop enroute or wait until arrival at the scene to don their PPE?

***While the vehicle is in motion, all responders should be seated and belted in an approved riding position.***

(l)-3. OSHA is seeking input on whether it should require that patients be restrained during transport to prevent an unrestrained patient from being thrown into a team member or responder in the event of a vehicle collision or an evasive driving maneuver.

***All patients should be restrained with the appropriate 5-point harness unless extreme conditions are present that prevent their use.***

INCIDENT MANAGEMENT

(o)-1. OSHA is seeking input about WERE and ESO current use of an Incident Management System (IMS), whether the National Incident Management System (NIMS) and National Response Framework were used as guidance for the IMS, and if there are any concerns with being compatible with NIMS.

***The Nationally recognized and accepted NIMS system should be trained to, and used by, all emergency response agencies. This is the only way to gain consistency across jurisdictions.***

EMERGENCY INCIDENT OPERATIONS

(p)-1. OSHA is seeking input on current practices for identifying and communicating the various control zone boundaries. What marking methods are used? How are they communicated to team members and responders? Do the marking methods help or hinder on-scene operations?

***We believe that the IC should do a 360-degree assessment of the scene and set up the appropriate cold, warm, hot and no entry zones based on the complexities and hazards of the incident when dictated by the facts presented. This does not include a wholesale requirement to set up all of these zones on every incident.***

STANDARD OPERATING PROCEDURES

(q)-1. OSHA seeks input on whether the agency should include requirements for Standard Operating Procedures (SOPs) regarding protections against workplace violence for team members and responders, and for any data or documentation to support or refute potential requirements. OSHA notes that its regulatory agenda includes a separate rulemaking addressing workplace violence against health care workers. While OSHA has not published a proposed rule in that rulemaking, OSHA welcomes comments on whether violence against emergency responders should be addressed in a potential Emergency Response final rule in addition to that Workplace Violence rulemaking, instead of in that rulemaking, or primarily in that other rulemaking.

***Workplace Violence, Sexual Harassment, and Bullying are already addressed by other state requirements. There is no reason to have them included in this rule as a duplication of requirements.***

POST-INCIDENT ANALYSIS

(r)-1. OSHA is considering adding a requirement to permit team members, responders, and their representative to be involved in the review and evaluation of the relevant plans as part of the Post-Incident Analysis and would like stakeholder input on whether to add this requirement.

***The appropriate post-incident analysis should be recommended and then implemented by the AHJ as they feel the event dictates. Mandated analysis is not warranted or productive.***

CONSENSUS STANDARDS

OSHA is seeking input on the potential impacts of incorporating by reference of various NFPA standards, and how equivalency or consistency could be achieved if the NFPA standards were not incorporated by reference.

***Incorporating By Reference leads to confusion and makes it difficult to understand exactly what is required and when. The standards also change and are being combined by NFPA which will lead to greater confusion as time goes on. WE STRONGLY RECOMMEND THAT OSHA REMOVE THE INCORPORTAED BY REFERENCE STANDARDS AND PUT THE LANGUAGE OF THE REQUIREMENT DIRECTLY INTO THE RULE ITSELF.***

COSTS OF COMPLIANCE

OSHA is seeking comments on the estimated wages used to represent volunteers and also whether the valuation of volunteers’ time and incarcerated individuals’ time is reasonable.

***We feel these numbers are grossly underestimated in the OSHA document, and they be revised with relevant data. We find fault with both the salary levels used and in many cases the comparisons of job tasks that were referenced in the document.***

ECONOMIC FEASIBILITY

There has been no economic feasibility threshold established for public entities equivalent to the ten-percent profits threshold for private entities. OSHA is seeking comment on what economic feasibility threshold would reasonably apply to the public sector.

OSHA is also seeking comments, information, and data on the economic feasibility of compliance for public organizations.

***We strongly encourage OSHA to reevaluate what the true cost of this proposed standard using accurate data and sources. This comment period has not been long enough to digest the sources of information available, however both the NVFC and IAFC have provided examples of information that they feel better represent the true budgets and sizes or organizations that will be covered by this rule. The bottom line is that smaller, rural, volunteer, combination, and even smaller all career departments do not currently have the budgets or funding necessary to fund these mandates. We will be left with the choice of either closing the doors or to continue to operate knowing that we are not following the proposed OSHA 1910.156 Emergency Response Standard. This will open the door for extensive liability if and when serious injuries and deaths occur to one of our employees.***

INITIAL REGULATORY FLEXIBILITY ANALYSIS

The Regulatory Flexibility Act requires OSHA to show impacts on small entities and defines small government entities as those serving populations of less than 50,000. Given the unique circumstances of volunteer fire departments, some other approach may be more useful for purposes of OSHA’s analysis. OSHA is seeking comments, information, and data on additional analyses that the agency should develop to demonstrate economic feasibility and illustrate economic impacts on small entities.

***We find the irony in this question by OSHA in that WE DID participate and voice strong concerns during the small entity process, We feel that for the most part OSHA completely dismissed the concerns addressed during that process. Again, during this open public comment period, we are seeing a large number of concerns, ideas, and offers to help expressed by our agencies. Will OSHA use any of this feedback to help guide the process? We can have all the processes in the world established but if OSHA is unwilling to consider our concerns as valid, what is the purpose of this process? Checking a box to say you tried is not the way to negotiate a reasonable document.***

TIMELINE FOR COMPLIANCE

OSHA is open to considering alternative compliance dates for the proposed standard and seeks input on what reasonable implementation periods would be for specific provisions and why. The agency is also interested if extended compliance timelines would be particularly helpful to small and/or volunteer organizations as a way of mitigating the impact of the rulemaking.

***We feel the proposed timeline for compliance by OSHA is overly aggressive and not realistic. It is difficult for us to propose an exact timeline given the short comment period that we have been granted. We have yet to see the comments from our state that would allow us to understand the timeline they feel that they can have the needed courses developed, stood up, and offer enough capacity to get all of our required personnel through them. We have yet to see a cost or availability of the required physicals to know what this would look like. We have yet to see an exact cost of implementation to know how much additional funding we would need to raise to meet them. Without this data it is impossible for us to offer an alternative timeline. Many have expressed a period of 5 to 10 years to reach compliance. Those numbers seem much more realistic than the proposed 2 to 24 months proposed by OSHA.***

ADDITIONAL THOUGHTS

We believe there are many areas where this proposed standard has not gone far enough to protect our responders. Vehicle response policies, driver training requirements and scene operations top the list of areas of improvement to the proposed standard. We would ask exactly how many and which boots on the ground emergency responders were included in authoring this proposal? It appears to us that it was constructed by a large number of people who are not involved in the direct day-to-day activities of the workers it is designed to protect. OSHA states that it tried repeatedly to gain data and insight from these responders. We find this interesting in that not one of the over 50 well-connected-to-emergency-services members of our committee were ever asked their opinion or even knew this process was taking place. We areurging OSHA now to sit down with us and have open, honest, two-way communication to salvage a proposed rule that should be good for all of us.

**Supporting Documentation**

Here is just one example of why we feel much of the approach of the proposed document is confusing (start reading from the bottom of email chain upwards):

Bill,

Thanks for the updated information. I am still a little fuzzy on what “parts” of NFPA 1582 would need to be followed. My concern is that I have lived in this document for months now and do not feel I know exactly what level of physical we need to provide and to whom. Our vendors have also expressed concerns that they do not understand exactly what is required under the proposed rule and have given us quotes from a few hundred to several thousand dollars per physical. A lot of the confusion that I am hearing from folks is the multiple places that need to be referenced in order to know exactly what we would be required to comply with. Having to navigate the rule itself, the explanatory material, the referenced NFPA standards and then the other standards referenced within the standards, make it extremely difficult to follow, especially for a fire service being run by a voluntary board and group of officers. We simply do not have the time or resources to analyze each item we find like this one throughout the document and proposed rule. We want to provide all of our responders with a comprehensive physical that will protect both them, and us as the Authority Having Jurisdiction. Being able to define exactly what components are required is extremely important to us in being able to determine if it is economically and logistically feasible to comply with. Having to determine ourselves if a physical being offered by our vendor is equivalent to the referenced portion of an NFPA standard is extremely difficult with the current wording. We wonder why OSHA did not simply include this information directly into the bulk portion of the rule and not make the reader dig for the information, leading to confusion and possible misrepresentation?

In a recent Supreme Court's opinion, Ohio et al v. EPA, Chief Justice Roberts cites FCC v. Prometheus Radio Project, it was demonstrated that the government has a responsibility to qualify an action as "reasonable and reasonably explained". If it is difficult for the end user to understand, it is considered to meet the definition of "arbitrary and capricious".  The fact that I am still confused after you provided a detailed and somewhat cryptic explanation to me, leaves me concerned that the NPRM is not meeting the definition of "reasonable and reasonably explained".

We commend OSHA on the amount of work that has been put into this proposed rule and there are a ton of good concepts that can, and should, be complied with.  We are not opposed to them. Our main concern is the format and clarity of the proposed rule. We would welcome to the opportunity to have some good face to face conversation on these concerns.

Dave

David C Denniston

SVP Risk Management

McNeil and Company Inc.

607-428-2169

**From:** OSHA Emergency Response Rulemaking <[OSHA.Emergency.Response@dol.gov](mailto:OSHA.Emergency.Response@dol.gov)>   
**Sent:** Tuesday, July 9, 2024 5:12 PM  
**To:** Denniston, David <[ddenniston@mcneilandcompany.com](mailto:ddenniston@mcneilandcompany.com)>  
**Subject:** RE: Clarification on OSHA 1910.156 questions

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| CAUTION: External email. |

Hi Dave,

With respect to 1910.6, in the explanation about IBR on p. 7793, we state that the consensus standards are IBR “in whole or in part.” In the proposed regulatory text (p. 8016), in provision (g)(3)(i)(A), the requirement is for medical surveillance to be at least equivalent to the medical examination criteria specified in NFPA 1582. OSHA intends for the criteria to be equivalent to the medical examination and testing components contained in NFPA 1582, Chapter 7, Sections 7.4-7.7.  So, we are IBR NFPA 1582 “in part.”

NFPA 1582, Chapter 7, Sections 7.1-7.3 were used as a basis for other proposed provisions. One such provision is the frequency of examinations. In proposed provision (g)(2)(v) (p. 8016), OSHA specifies two-years as the frequency for medical evaluations. In the summary and explanation for the provision (p. 7818), we explain our reasoning for proposing a two-year frequency, instead of the one-year period specified in NFPA 1582, Section 7.1.

Thank you for your offer of assistance. We look forward to your submissions to the docket and encourage you to participate in the public hearing being planned for a date to be decided.

Regards,

Bill Hamilton

**From:** Denniston, David <[ddenniston@mcneilandcompany.com](mailto:ddenniston@mcneilandcompany.com)>   
**Sent:** Monday, July 8, 2024 10:59 PM  
**To:** OSHA Emergency Response Rulemaking <[OSHA.Emergency.Response@dol.gov](mailto:OSHA.Emergency.Response@dol.gov)>  
**Subject:** RE: Clarification on OSHA 1910.156 questions

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Bill,

Thank you for the reply. We will work on some alternatives and work them into our comments. With less than 2 weeks left in the comment period, this could be difficult, but we will get in what we can. One current conflict is that the proposed rule talks about physicals every two years unless the 15 exposure threshold is met. The incorporated by reference NFPA standard states physicals are required every year.  This leaves confusion on which is required. OSHA 1910.6 would leave us to believe that the entire standard becomes incorporated into the rule when the trigger words (shall and must) are used. One of OSHA’s webinars indicated that the entire incorporated by reference was not the intention. Again, this has led to much confusion.

Both the Association Of Fire Districts New York State and the National Volunteer Fire Council offer our assistance in helping to compose a final rule that is economically and technically feasible to achieve and reach the goal of improved firefighter safety. Please let us know if we can further assist beyond the current comment period.

We 100% agree that updates are needed. Our concerns are with some of the requirements in the document as currently written.

Thank you, Dave

David C Denniston

VP AFDSNY

607-428-2169

**From:** OSHA Emergency Response Rulemaking <[OSHA.Emergency.Response@dol.gov](mailto:OSHA.Emergency.Response@dol.gov)>   
**Sent:** Monday, July 8, 2024 12:41 PM  
**To:** Denniston, David <[ddenniston@mcneilandcompany.com](mailto:ddenniston@mcneilandcompany.com)>  
**Subject:** Clarification on OSHA 1910.156 questions

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| CAUTION: External email. |

Mr. Denniston,

As you noted in your email, we are limited in our ability to communicate with individual stakeholders about the rulemaking at this time. It would be helpful if you could respond to this email with specific examples of conflicting information and where clarification is needed and we might be able to provide further clarity based on the publicly available material. In any event, it is always appropriate for stakeholders to include requests for clarification in their comment submissions along with their concerns or suggestions.

We are interested in receiving the best information possible from stakeholders. It would be helpful if commenters could tell us through their comment submissions what they could do when they say they can’t do what OSHA proposes.

We look forward to your email.

Bill

Bill Hamilton, MS, CSP, CFPS

Fire Protection Engineer

Directorate of Standards and Guidance

OSHA National Office

Washington, DC

Mr. Parker,

My name is David Denniston and I lead the NY fire service and NVFC (National Volunteer Fire Council)  efforts on a response to the proposed 1910.156 Emergency Response Standard. We are trying to provide accurate information to stakeholders on the effects this change will have on their organizations. There appears to be a great deal of conflicting information out there and we are trying to make sure that we are not part of the confusion. Would it be possible to have a meeting with you and/or your staff to gain some clarification on a couple of items? We are in favor of many of the proposed changes but have some concerns on the details of a few items such as the IBR NFPA standards and how exactly those would be applied.

I understand we are in the public comment period and your ability to communicate could be limited during this process. We are however looking to clarify the intent of a few items so that we may offer meaningful comments. Any help here would be greatly appreciated.

David C Denniston

2nd VP

AFDSNY

607-423-1636

This public comment has been written and submitted by David C Denniston as a summary of concerns as discussed during weekly NY State United Concerns OSHA Response committee meetings that have occurred every Thursday at 12pm eastern time since December 28, 2023. The people listed below have read these comments and agree that they are a true representation of our concerns and support the material submitted in this public comment dated 7/18/24. We thank OSHA for considering our concerns and further extend our offers to work with OSHA in the development of the final rule.

Questions or comments may be addressed to:

David Denniston [ddenniston@adfsny.org](mailto:ddenniston@adfsny.org) or by calling 607-423-1636

Signed by:

David C Denniston

2nd VP Association of Fire Districts State of New York

Additional names listed here: Please reply with your consent to have your name added to this document